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SUBJECT: INTELLECTUAL PROPERTY RIGHTS (IPR) ROUNDTABLE IN MADRID

1. (U) Summary: U.S. Commerce Deputy Assistant Secretary Eric Stewart and Spain's Under Secretary of Culture presided over a day-long U.S.-Spain IPR Roundtable in Madrid on September 28. This event stemmed from former Commerce Assistant Secretary William Lash's February 27 Roundtable proposal to his Spanish interlocutors (reftel). Two issues emerged as key: the alleged lack of implementation of the GOS's IPR anti-piracy plan, and a provision in Spain's draft implementing legislation to the EU's copyright directive to allow three "private copies" of CDs. The head of the local association representing video store owners also criticized GOS anti-piracy actions aggressively. The GOS actually invited USG comments on the anti-piracy plan, which gives us a good opening for follow-up. There was also positive press coverage. The Roundtable intentionally focused on copyright because this is where USG commercial interests are at stake; the U.S. currently has few patent and/or trademark related problems in Spain. End Summary.

PARTICIPANTS

2. (U) DAS Stewart was accompanied by Deputy Office Director Dascher. Other principal USG speakers included Department of Justice Senior Counsel Eric Klumb and United States Patent and Trademark Attorney-Advisors Michael Shapiro and Michael Smith. SCO and Trade Policy Officer also participated. Culture Ministry Under Secretary Hidalgo, Technical Secretary Concepcion Becerra, Subdirector Colmenares and Area Director Raquel Orts participated. The Ministry of Industry, Tourism and Trade sent one representative for a fairly technical segment. Local trade associations sent representatives. MPA's Brussels-based Europe anti-piracy director attended, as well as a London-based Time-Warner executive.

AGENDA

3. (U) The Roundtable agenda included the following elements. Opening Statements Presentation on Spanish anti-piracy plan Presentation on U.S. domestic anti-piracy strategy International Aspects of IPR Cooperation GOS-Industry Working Group on Internet IPR Issues Intellectual Piracy in the Age of the Internet, and the Challenge of Reconciling Technology and Content Provider Interests.

Closing Statements - Press Conference. There were two hours of time for comments/questions from attendees. In addition, DAS Stewart hosted a lunch for Under Secretary Hidalgo and DCM Manzanares hosted a reception for all the attendees.

SPAIN'S ANTI-PIRACY PLAN IN THE SPOTLIGHT

4. (SBU) As expected, Spain's anti-piracy plan was the center of the attendees' attention. All of the attendees expressed support for the plan but felt that not enough was being done on implementation. The Federacion para la Proteccion de la Propiedad Intelectual de la Obra Audiovisual (FAP) representative, Jose Manuel Tourne, Promusicae's D. Antonio Guisola, and the head of Union Videografica Espanola (UVE), Jordi Molist, were especially critical. (Note: Promusicae is associated with the International Federation of Phonographic Industries and FAP is associated with the Motion Picture Association of America (MPAA). The Business Software Alliance (BSA) did not send a representative, although they were invited). Essentially, they said that not enough resources were being devoted to the area, and that nobody had been appointed to head the plan yet. The FAP representative complained that the Ministry of Culture had reneged on a commitment to allow FAP to use the Ministry logo on an anti-piracy campaign. He also called for criminalizing the

consumption of pirated goods. All of the attendees had good words for the police but complained about judges and prosecutors - the plan envisages a Ministry of Justice circular to prosecutors instructing them to take IPR crimes more seriously, but this circular has still not been issued. The UVE representative was particularly scathing, saying that many of UVE's member firms were going out of business due to piracy. The Ministry of Culture left the career official, Pedro Colmenares, take the brunt of the criticism. Colmenares asked for patience and noted that prior to April 8 this year no government had crafted anything similar to the anti-piracy plan. He also suggested that market reasons were negatively affecting video and DVD rental stores, as well as piracy. (Note: The MPAA representative privately agreed that business reasons, as well as piracy, was affecting DVD/video rental stores. He said the trend now was for consumers to buy the product or get it from other distribution channels.) With respect to criminalizing pirated good consumption, Colmenares said that France and Italy did indeed have such legislation on the books, but that those countries did not actually enforce it.

PRIVATE COPIES ALSO A STICKING POINT

15. (SBU) Spain is currently crafting implementing legislation for the EU Copyright Directive. The current draft contains a provision allowing for three private copies of CDs. Trade Policy Officer's understanding is that this would, in effect, make Technological Protection Measures (TPMs) for movie and music CDs illegal if they prevented consumers from making private copies. The FAP representative was particularly critical of this provision. He also noted that the movie industry was different from the music industry. He contended that there might be a legitimate reason for consumers to make copies of music CDs. However, this was not the case for movies because almost every copy of a movie CD displaced a sale that would otherwise have been made. He wants a provision in the law stating that rights-holders have the right to determine whether private copies are permissible, and that copies would only be allowed under the TRIPS agreement's "three step test" (i.e. that exceptions shall be limited to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rights holder). The GOS concedes that there is no "right" to make private copies. However, the Spaniards claim that the draft legislation is sufficiently flexible to allow for more restrictions if the private copy exception does indeed prove to be ruinous to copyright-based industries in Spain. The FAP representative said his organization would like to see this organized more or less along the lines of Italy's draft which would allow for only one copy. (Comment: This is clearly a huge issue for some U.S. companies. The Time Warner representative attended the Roundtable mostly to follow this matter. She said that a similar provision was being proposed in France, but that because the French movie industry finally saw the dangers associated with uncontrolled private copying, the French government might adopt legislation less potentially prejudicial.)

DAS STEWART - UNDER SECRETARY HIDALGO LUNCH

16. (SBU) DAS Stewart hosted a lunch for Under Secretary Hidalgo and his staff. Stewart mentioned the Special 301 process and noted that pharmaceutical problems related to intellectual property, as well as copyright issues, influence Special 301 determinations. (Note: In Spain, other Ministries determine pharmaceutical market access issues. The government's cost containment measures are, a concern to the R&D-based pharmaceutical industry in Spain, including for American firms. In another meeting described in septel, U.S. pharmaceutical industry representatives told Stewart that an agreement between the Ministry of Health and industry on this topic has not been reached, which contradicted press reports saying that a deal had been reached. Industry representatives also raised concerns regarding patent protection for goods covered by Spain's older process patent system. Industry reps believe that Spain may not be compliant with its TRIPS commitments, in this respect. Technical Secretary Concepcion Becerra noted that industry was never pleased with the government. She mentioned that the government had had to beat back attempts by the local industry to get the government to impose protectionist measures (screen quotas, for instance). Later, during the DCM's reception, Under Secretary Hidalgo also said that this was a problem. Becerra added that she would welcome USG comments on the government's anti-piracy plan. (Comment: This gives us an opening to continue the dialogue with the GOS.)

PRESS COVERAGE

17. (U) DAS Stewart and Under Secretary Hidalgo conducted a press conference upon the conclusion of the Roundtable. The daily, El Mundo, and press agencies EuropaPress and EFE carried stories on the event on September 29. The stories were factual and basically recounted statements made by DAS Stewart and Under Secretary Hidalgo.

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Follow-up and Suggestion

18. (U) Trade Policy officer will draft a letter for DAS Stewart's signature commenting on the anti-piracy plan. Key elements in the draft will include praise for the comprehensive nature of the plan; a plea for arriving at an agreement with industry re: what to do about private copies; appointing an accountable head of the plan expeditiously; issuing a Ministry of Justice circular emphasizing the importance of imposing deterrent-level sentences on IPR violators; publicity campaigns developed in consultation with stakeholders etc.

19. (U) One thing the Commerce Department might want to consider is to invite Spain to a U.S.-Spain IPR conference in the United States next year. This could be an important tool in keeping momentum on IPR issues going, and in making credible the notion that the U.S. and Spain are, in fact, partners in combating IPR piracy.

COMMENT

10. (SBU) This was, at times, a confrontational event with three industry representatives criticizing the GOS severely. In the end though, the GOS and industry representatives conducted animated and substantive conversations on the margins of the Roundtable and during the reception. Our sense is that this event may serve to galvanize the GOS into stronger action in safeguarding copyrights, and was thus a useful initiative in serving our IPR policy objectives in Spain.
MANZANARES